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February 1, 2011

Corbin R. Davis
Clerk of the Court
Michigan Supreme Court
925 W. Ottawa
Lansing, MI 48933

Re: ADM File No. 2006-38
Proposed Amendments of Subchapter 9.100 *et seq* etc.



Dear Mr. Davis,

The Judicial Tenure Commission has considered the proposed amendments to the Michigan Court Rules 9.100 *et seq.* The Commission supports, endorses, and adopts the comments in (now former) Justice Corrigan's comments.

The Commission affirms what Justice Corrigan articulated: "the State Bar's proposal to delete four grounds for discipline from the current rule likely could impinge on the Judicial Tenure Commission's ability to [recommend that the Supreme Court] discipline judges under subchapter 9.200 *et seq.*" The Commission does not keep track of its recommendations categorized by the grounds for discipline. But a quick search on Westlaw shows that the Court imposed discipline (including removal) on judges in the following matters based on the following violations of MCR 9.104:

MCR 9.104(A)(1) (conduct prejudicial to the proper administration of justice)

- *In re Sanders*, 485 Mich 1045 (2010) (judge stood for election as mayor of Detroit while both a candidate for and then a judge)
- *In re Nettles-Nickerson*, 481 Mich 321 (2008) (judge made and solicited false statements, including submitting fabricated evidence)
- *In re Noecker*, 472 Mich 1 (2005) (judge fled the scene of an accident and made false statements under oath)

- *In re Gilbert*, 469 Mich 1224 (2003) (judge smoked marijuana in public)
- *In re Trudel*, 468 Mich 1243 (2003) (fraudulent attempt to obtain disability benefits)
- *In re Noecker*, 472 Mich 1 (2005) (judge fled the scene of an accident and made false statements under oath)

MCR 9.104(A)(2) (conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach)

- *In re Logan*, 486 Mich 1050 (2010) (involved himself in a friend's matter)
- *In re Nebel*, 485 Mich 1049 (2010) (convicted of drunk driving)
- *In re Sanders*, 485 Mich 1045 (2010) (judge stood for election as mayor of Detroit while both a candidate for and then a judge)
- *In re Servaas*, 484 Mich 634 (2009) (offensive sexual drawings and comments)
- *In re Nettles-Nickerson*, 481 Mich 321 (2008) (judge made and solicited false statements, including submitting fabricated evidence)
- *In re Haley*, 476 Mich 180 (2006) (judge stood for election as mayor of Detroit while both a candidate for and then a judge)
- *In re Ford*, 469 Mich 1251 (2004) (sexual misconduct involving court employees)

MCR 9.104(A)(3) (conduct that is contrary to justice, ethics, honesty, or good morals)

- *In re Nettles-Nickerson*, 481 Mich 321 (2008) (judge made and solicited false statements, including submitting fabricated evidence)
- *In re Haley*, 476 Mich 180 (2006) (judge stood for election as mayor of Detroit while both a candidate for and then a judge)
- *In re Ford*, 469 Mich 1251 (2004) (sexual misconduct involving court employees)

MCR 9.104(A)(5) (conduct that violates a criminal law of a state or of the United States)

- *In re Nettles-Nickerson*, 481 Mich 321 (2008) (judge made and solicited false statements, including submitting fabricated evidence)

- *In re Haley*, 476 Mich 180 (2006) (judge stood for election as mayor of Detroit while both a candidate for and then a judge)
- *In re Ford*, 469 Mich 1251 (2004) (sexual misconduct involving court employees)

Although there may have been other grounds in these matters as well, lacking the grounds listed in the current version of MCR 9.104 would have necessarily weakened the impact and import of the case.

In short, the current version of the rule is critically important. Moreover, there seems to be nothing wrong with the rule in its current form. All of which prompts the response, "if it ain't broke, don't fix it."

Very truly yours,



Paul J. Fischer
Executive Director and
General Counsel

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cc: To All Commission Members